

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-058

November 25, 1998

CENTRAL MAINE POWER COMPANY
Divestiture of Generation
Assets - Request for Approval
of Sale of Generation Assets

ORDER - PART I

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

We approve the sale of generation assets from Central Maine Power Company (CMP) to FPL Energy Maine, Inc. (FPL-Me).

Pursuant to Chapter 110, section 1003(b) of our rules, we issue our decision in two parts. This first part states our conclusion on approval of the sale and makes the necessary findings for the Commission to certify that the facilities should be granted Exempt Wholesale Generation (EWG) status by the Federal Energy Regulatory Commission (FERC). We also make findings that Maine law grants to CMP, or its predecessors, rights, privileges, or immunities that are generation assets required to be divested. The second part, that will be issued in December, 1998, will contain the full statement of the Commission's findings and reasoning, including the decisions on ratemaking issues.

CMP seeks authority to sell its hydro, fossil and biomass generation assets to FPL-Me, pursuant to an Asset Purchase Agreement entered into on January 6, 1998 and amended on June 16, 1998. We find that the sale offers significant benefits to CMP's ratepayers, even if the Letter Agreement between CMP and FPL-Me, dealing with transmission access issues, is considered a necessary and integral part of the Asset Purchase Agreement. Accordingly, we conclude that the sale of generation assets to FPL is in the public interest. However, we do not decide whether the Letter Agreement is a necessary part of the Asset Purchase Agreement or a separate agreement; our decision to grant all regulatory approvals sought here does not in any way depend on the ultimate resolution of that issue.

EWG Findings

CMP requests that the Commission issue Exempt Wholesale Generation (EWG) findings with any order that approves the sale of the hydro, fossil and biomass generation assets to FPL-Me. FPL plans to file applications for EWG determinations with the

FERC. Because the facilities to be sold to FPL were reflected in rates on October 24, 1992, under FERC regulations, 18 C.F.R. § 365.3(b), the Maine Commission must certify that allowing the facilities to be eligible:

- (1) will benefit consumers;
- (2) is in the public interest; and
- (3) does not violate Maine law.

FERC has required an EWG application to include a certification that the state commission has made the necessary findings noted in the previous sentence.

We have concluded that the transfer of the generating assets to FPL-Me is in the public interest. Consumers will benefit by the implementation of the Legislature's requirements of separation of generation from transmission and distribution, as well as by the significant reduction in stranded costs. The assets are transferred because of state law, obviously not in violation of state law. Because the Restructuring Act (35-A M.R.S.A. § 3201-3217) separates generation from transmission and distribution and will remove generators from the definition of electric utility, allowing the FPL facilities to be eligible facilities: (1) will benefit consumers; (2) is in the public interest; and (3) does not violate Maine law.

Findings Relating to Generation-Asset-Related Rights,
Privileges and Immunities

During its 1998 session, the Maine Legislature passed a law authorizing utilities to convey their generation-asset-related rights, privileges and immunities which are required to be divested under the Restructuring Act. The new law, codified at 35-A M.R.S.A. § 3204(8), authorizes the transfer of generation-asset-related rights, privileges and immunities, but only after (1) the utility provides to the Commission a copy of the law granting the rights and a description of the proposed transfer and (2) the Commission specifically finds that the law grants rights, privileges, or immunities that are generation assets required to be divested or that are necessary to the ownership or operation of generation assets required to be divested.

On June 25, 1998, CMP provided a copy of laws that grant to CMP or its affiliates (or their predecessors) the rights, privileges or immunities that CMP believes are generation-asset-related and that CMP proposes to transfer to FPL-Me.

Having examined the laws provided to the Commission by Central Maine Power Company pursuant to 35-A M.R.S.A. § 3204(8), the Commission finds that:

(1) With respect to the facilities listed below, the Mill Act (38 M.R.S.A. § 651) grants rights, privileges or immunities that are generation assets required to be divested under 35-A M.R.S.A. § 3204 or that are necessary to the operation of generation assets required to be divested under that section:

Kennebec River Generation

Harris (Indian Pond)
Wyman
Williams
Weston
Shawmut
Lockwood

Kennebec River Storage

Brassua
Moosehead

Messalonskee Stream Generation

Oakland (M-2)
Rice Rips (M-3)
Union Gas (M-5)

Sebasticoock River Generation

Fort Halifax

Androscoggin River Generation

Gulf Island Project
Gulf Island
Deer Rips
A-3

Brunswick-Topsham

Lewiston Falls Project

Monty
Bates Upper
Bates Lower
Hill Mill
Lower Androscoggin
Continental

Saco River Generation

Hiram
Bonny Eagle
West Buxton
Bar Mills
Skelton

Cataract Project

Cataract
NKL

Presumpscot River Generation

North Gorham

Ossippee River Generation

Upper Kezar Falls
Lower Kezar Falls

Little Ossippee River Generation

Ledgemore

(2) With respect to the Long Falls Dam (Flagstaff) facility, P. & S.L. 1927, ch. 113 and P. & S.L. 1937, ch. 62, and all other amendments thereto grant rights, privileges or immunities that are generation assets required to be divested or that are necessary to the ownership or operation of generation assets required to be divested.

(3) With respect to the Middle Dam at Richardson Lake, the Upper Dam at Mooselucmegantic Lake and the dam at Rangeley Lake, P.&S.L. 1885, ch. 448 grants rights, privileges or immunities that are generation assets required to be divested or that are necessary to the ownership or operation of generation assets required to be divested.

(4) With respect to the Aziscohos Dam, P.&S.L. 1909, ch. 147 grants rights, privileges or immunities that are generation assets required to be divested or that are necessary to the ownership or operation of generation assets required to be divested.

Accordingly, we

O R D E R

That the sale of CMP's hydro, fossil and biomass generation assets to FPL-Me, pursuant to the Asset Purchase Agreement entered into on January 6, 1998 and amended on June 16, 1998. is authorized.

Dated at Augusta, Maine this 25th day of November, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: WELCH
NUGENT
DIAMOND

This Order has been designated for publication.